

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYASHTA 1929

TRC.No. 154 of 2000()

AGAINST ORDER DATED 28.9.1999 OF THE COMMISSIONER OF
AGRICULTURAL INCOME TAX, THIRUVANANTHAPURAM
.....

PETITIONER:

CHADRAPRABHA CHARITABLE TRUST, REPRESENTED
BY ITS PRESIDENT SRI.M.J.VIJAYAPADMAN,
VIJAYA MAHAL, KALPETTA NORTH,
WYNAD DISTRICT, KERALA.

BY ADV. SRI.C.KOCHUNNY NAIR
SRI.DALE P.KURIEN

RESPONDENTS:

1. THE COMMISSIONER OF AGRICULTURAL INCOME TAX
TRIVANDRUM.

2. STATE OF KERALA REPRESENTED BY THE SECRETARY
(TAXES) GOVERNMENT SECRETARIAT, TRIVANDRUM.

BY SPL.GOV.T.PLEADER (TAXES) SRI.V.V.ASOKAN

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD
ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

T.R.C.No.154 of 2000

Dated, this the 12th day of June, 2007

ORDER

H.L.Dattu, C.J.

This revision petition arises under the provisions of the Kerala Agricultural Income Tax Act, 1991. The assessment year in question is 1999-2000. The one and the only question that would arise for our consideration and decision is whether the Chandraphabha Charitable Trust is a public charitable trust and the agricultural income it derived is exempt from payment of tax under the Kerala Agricultural Income Tax Act, 1991 (Act for short).

2. The Trust have gone before the respondent authority seeking registration under Section 16 of the Act. The authority had granted the exemption. Thereafter, on realising that the agricultural income of the Trust is not being utilised for the public, but is being utilised only for the purpose of its own family members, it has passed an order under sub-section (12) of Section 16 of the Act and thereby cancelled the registration issued earlier. While doing so, the Deputy Commissioner of Commercial Taxes has observed in his order as under:

“The contention of the President of the Trust is not acceptable on the following grounds: The object of the above Trust clearly show that the Trust is meant for propagation of Jain Religion and rendering help to the followers of Jain religion, particularly to the families who created the Trust. The Trust deed itself reveals that it is a private family Trust.”

3. Aggrieved by the order so passed cancelling the registration granted under Section 16 of the Act, the assessee had carried the matter before the Commissioner of Agricultural Income Tax, Thiruvananthapuram in Case No.AIT RP. 2/99. The Commissioner after hearing the counsel and after going

through the various clauses in the Trust deed has passed the order dated 28.9.1999 rejecting the revision filed by the assessee. While doing so the Commissioner has stated as under:

“The terms and objects of the Trust clearly show that it is against the provisions of sec.16 of the KAIT Act 1991. On an examination of the findings of the Hon'ble Supreme Court in Kerala State vs. M.P.Shanti Varma Jain reported in 6 KTR 461 (S.C.) it can be seen that the facts and circumstances of this case under revision is one and the same and so the decision in that case is squarely applicable in this case also. “

4. Aggrieved by the findings and conclusions reached by the revisional authority, the assessee is before us in this tax revision case.

5. The assessee has raised the following questions of law for our consideration and decision. They are as as under:

“a) Whether the Deputy Commissioner has power to cancel the registration under Section 16(12) of the AIT Act 1991 without finding that the trust has violated any stipulations in the trust deed or has tried to avoid or reduce the tax payable?

b) Whether the Deputy Commissioner after holding that the trust was created for public charitable purposes scrutinising the trust deed later hold otherwise without any evidence whatsoever?

c) Whether the cancellation of registration of the trust will fall under the ambit of section 16(12) of the AIT Act 1991?

d) Is not the trust entitled to exemption as the agricultural income is used wholly for charitable or religious purposes as stipulated in the trust deed?

e) Whether the authorities were justified in relying on judgment reported in the Shanti Varma Jain's case (6 KTR 461) which was under the old Act and without understing the fact that the Hon'ble Supreme Court found that the Hon'ble High Court fell into error by going into a question which was not the subject matter of the reference?

f) Whether the authorities were justified in not even advertng to the various judicial pronouncement of the Hon'ble Supreme Court holding that “it is well settled that an object beneficial to a section of the public is an object of general

public utility. To serve a charitable, it is not necessary that the object should be to benefit the whole of mankind or all persons in a country or state. It is sufficient if the intention to benefit a section of the public as distinguished from a specified individual is present. The Section of the community sought to be benefitted must be sufficiently definite and identifiable by some common quality of a public or impersonal nature?

g) Whether the Authorities were justified in not considering the various objects of the trust meant for the benefit of general public?

h) Whether the Authorities were justified in not adverting to the various decisions of the Hon'ble Supreme Court which were squarely applicable to the trust on hand?

i) Whether the authorities were justified in not holding that the trust was utilizing the agricultural income derived for public charitable purposes as envisaged under Section 16 of the Act."

6. The sum and substance of the questions of law raised by the assessee are (i) whether the Deputy Commissioner after registering the Trust under Section 16 of the Act, can pass an order cancelling the registration and (ii) whether the Trust is a public or private Trust?

7. In order to appreciate the contentions canvassed by the assessee, the provisions of Section 16 and 16(12) of the Act requires to be looked into by us. Section 16 of the Act speaks of Charitable Trusts and Institutions. From Section 16(1) upto 16(11) speak of the procedure that requires to be followed by the Trust for claiming exemption from payment of tax under the Agricultural Income Tax Act. Section 16(12) of the Act is relevant for the purpose of this case. Therefore, it is extracted. It reads as under:

"(12) If the Deputy Commissioner is satisfied that any trust or institution registered under this section, is not utilising the agricultural income in accordance with the provisions in the instrument or deed creating the trust or institution or otherwise tries to avoid or reduce the tax payable under this act he may cancel the registration after giving the trust or institution a reasonable opportunity of being heard."

A reading of the aforesaid provision would make it clear that if for any reason the Trust is not utilising the income in accordance with the provisions of the Trust deed the authority who had granted the certificate may cancel the registration of such certificate.

8. In the instant case, in exercise of his powers under Section 16 of the Act, the Deputy Commissioner had registered the Trust. By virtue of the registration, the Trust was exempted from payment of agricultural income tax on the agricultural income derived by the assessee. After coming to know that the Trust in question is not a public Trust, but purely a private trust meant for the purpose of a particular community and also meant for the family members of the Trust, the authority has proceeded to cancel the Trust. In our opinion, sub-section (12) of Section 16 of the Act gives authority and power to the Deputy Commissioner to pass such an order. In that view of the matter, the first question framed by the assessee requires to be answered in favour of the revenue and against the assessee.

9. In so far as the second question is concerned, both the authorities under the Act have carefully gone through the clauses of the Trust deed and thereafter have come to the conclusion that the Trust that is formed by the assessee is not a public Trust, but only a private Trust meant for a particular community. Reliance is placed on the observation made by the apex Court in the case of **State of Kerala v. M.P.Shanti Verma Jain** [(1998) 6 KTR 461]. In the said decision the apex Court has observed as under:

“Reversing the judgment of the Kerala High Court held that the object of the Trust was to propagate a particular religion and to render service to the followers of that religion, particularly, with reference to the families, who created the Trust. Therefore, the assessee could not be considered for exemption, being a private trust, set up to promote a particular religion whose agricultural

income does not enure for the benefit of general public. (Para 5)”

10. In view of the above, in our opinion, even the second question of law requires to be answered against the assessee and in favour of the revenue.

11. For the aforesaid reasons, we are of the opinion, that none of the authorities under the Act has committed any error whatsoever. Accordingly, this tax revision case requires to be rejected and it is rejected. Ordered accordingly.

C.M.P.No.,2402 of 2000 stands dismissed.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns